

This letter discusses the sales tax treatment of cellular phones when they are either given away or sold. (See, 86 Ill. Adm. Code 150.305.) (This is a GIL).

October 6, 2003

Dear Xxxxx:

This letter is in response to your letter dated July 3, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our web site at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We currently sell wireless services and products. When we sell a phone product, what should the sales tax be based upon? The cost of the product or the final selling price? We are getting conflicting answers from your hotline. EXAMPLE: We buy a product from our vendor for \$200. No sales tax. We sell the product for \$50 to the customer. The difference is paid to us in commissions from our wireless carrier. What is the sales tax?

Although not clear from your letter, we assume herein that you are not engaged in a business of selling telecommunications services, but rather act as agent for an independent provider of wireless telecommunication services.

Enclosed is a copy of 86 Ill. Adm. Code § 130.101 concerning the Character and Rate of Tax. Retailers' Occupation Tax is imposed upon persons engaged in the business of selling tangible personal property to purchasers for use or consumption. The tax is measured by the sellers' gross receipts from sales of tangible personal property.

If retailers sell cellular phones to their customers, the retailers incur Retailers' Occupation Tax measured by the gross receipts from the sales. At the time the retailers purchase cellular phones from their suppliers, the retailers should supply Certificates of Resale to their suppliers. Then, when the retailers sell the cellular phones, the retailers will pay Retailers' Occupation Tax based on the amount they receive from their customers. This amount represents the gross receipts received from the sale of the cellular phone.

It is important that retailers be very careful when computing the amount of gross receipts from the sales of their cellular phones. "Gross receipts" means "all the consideration actually received by the seller, except traded-in tangible personal property" from all sources. See 86 Ill. Adm. Code 130.401. If the money retailers receive from cellular service providers is the equivalent of a reimbursement for the discount offered to the customer, then this amount is included in gross receipts and is taxable. The retailers are required to collect a complementary Use Tax liability from their customers when the sales of the cellular phones occur. Enclosed is 86 Ill. Adm. Code § 150.130 concerning Accounting for the Tax, which explains this provision. The tax should be listed as a separate item from the selling price of the equipment and not as an administration or service charge. See 86 Ill. Adm. Code § 150.135, enclosed. If the commission that retailers receive from cellular service providers represents compensation based on a percentage of an amount agreed to be paid for every activation, it is not subject to sales tax.

In the example you have provided, gross receipts include the \$50 charged the customer. If the commission represents reimbursement for the discount provided the customer, it is also subject to tax.

I hope this information is helpful. If you require additional information, please visit our web site at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Brian L. Stocker
Associate Counsel

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